

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24202  
Docket Number SG-23964

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: { Brotherhood of Railroad Signalmen  
{ Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Southern Pacific Transportation Company (Pacific Lines):

On behalf of Special Signal Technician R. W. Treon for six and one-half hours' pay at one and one-half times his regular rate for work he was required to perform 3:30 p.m. to 10:00 p.m. Monday, October 1, 1979." (Carrier file: SIG 125-157)

OPINION OF BOARD: Claimant herein is a monthly rated Special Signal Technician. His rate of pay is based on 213 hours per month as provided in Rule 5(a) of the Agreement, which states, in pertinent part:

"Special Signal Technician shall be assigned one regular rest day per week, Sunday if possible, which is understood to extend from midnight to midnight. Overtime rules applicable to hourly rated employees will apply to service on holidays and assigned rest day, and to ordinary duties worked on the sixth day of the work week. The straight time hourly rate for positions of Special Signal Technician shall be determined by dividing the monthly rate by 213 hours. Future wage adjustments shall be made on the basis of 213 hours per month. Actual time worked or held for duty in excess of 213 hours in any calendar month, excluding paid for overtime hours, will be paid for at the rate of time and one-half."

Claimant's regularly assigned hours were Monday through Friday from 7:00 A.M. to 3:30 P.M. (with a half hour off for lunch). Being a monthly rated employee, Claimant was paid for six days per week even though he performed regularly assigned work only five days per week; it was understood that he would hold himself available for duty on the sixth day. His position was assigned the rest day of Sunday.

On October 1, 1979 Claimant worked his regularly assigned eight hours, but was required to work six hours and thirty minutes beyond the normal hours to handle hot box detector repairs. Claimant began his vacation in October of 1979, with three days of compensated vacation that month. For the entire month the total hours worked and held on duty by Claimant was 198 hours and thirty minutes. In addition, he was compensated for three days of vacation time. This dispute is based on Carrier's refusal to compensate Claimant, at

the time and one-half rate for the six hours and thirty minutes of claimed overtime worked on October 1st.

It must be noted, at the outset, that Petitioner in its submission and rebuttal documents before this Board has cited certain sections of the National Vacation Agreement, interpretations of that Agreement and certain letter agreements which were neither presented nor discussed during the processing of this Claim on the property. Carrier has objected to these arguments as being raised de novo at this stage of the proceeding. This Board, on numerous occasions, has ruled that such tardy presentations of rules or arguments may not be considered by the Board in the resolution of the dispute (e.g. Awards 19773, 21331, 21441 and many others). Any such consideration is contrary to the intent of the Railway Labor Act since all such issues and rules should have been discussed during the earlier handling of the dispute in order to facilitate settlement.

Petitioner argues that when a monthly rated employee is on vacation, the vacation time should be counted towards the 213 hours provided by Rule 5(a) and all hours beyond 213, including the vacation hours warrant overtime payment. Petitioner notes that the rule does not exclude vacation time, it only excludes paid-for overtime hours. It is argued further that to be consistent, Carrier should consider and treat Saturday pay and vacation pay similarly under Rule 5(a). The Organization argues that Carrier's position would permit the working of an employee for as much as twelve hours per day for a long period of time, if there was a vacation time in the month, with no overtime payments; this would be patently unreasonable.

Carrier points out that the provisions of Rule 5(a) are clear and unambiguous with respect to overtime: the rule provides for overtime for (1) service performed on holidays and assigned rest days; (2) for service performed on the sixth day of work; and (3) for actual time worked or held for duty in excess of 213 hours in a month. Carrier notes that in Second Division Award 6733 the Board held that: "If the parties had intended to let vacation recess stand in place of work assignments, it must be assumed that they would have included such a statement in the clause."

The Board notes that the rule in question specifies "actual time worked" with respect to overtime qualification. This meaning is clear and specific. It would be improper, as the Petitioner would have us do, for this Board to add the terms of vacation time to the qualification; that modification can only be accomplished at the bargaining table.

The issue herein was addressed by this Board in Award 14897. In that Award we said, inter alia:

"There is no rule in the Agreement which provides that time off duty with pay will be considered as time worked for overtime pay purposes ... The fact that he received vacation pay for those days does not constitute 'work' within the meaning and intent of the overtime provisions of the Agreement."

The Board herein also concludes that Claimant did not work, or hold himself available for work, for more than 213 hours during October of 1979. The Claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

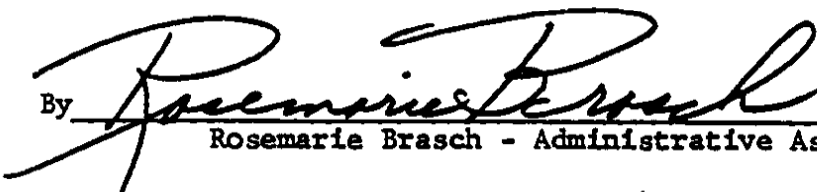
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.